IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5005 0F 1989

Kolhapur District Central Cooperative ..
Bank Limited, Kolhapur .. Petitioner

versus

1. The State of Maharashtra &ors ..Respondents

Mr.Tejpal Ingale for Petitioner

Mr.P.M.Patil, Assistant Government Pleader for
Respondent nos. 1 and 2.
Mr.P.D.Dalvi for Respondent no. 3 (Absent)
Mr.D.A.Nalavade for Respondent no. 4 (absent)
Mr A.V.Bandiwadekar for Respondent no. 5 (absent)

WITH WRIT PETITION NO. 5156 OF 1989

Kolhapur District Central Cooperative
Bank Limited .. Petitioner

vs

1. The State of Maharashtra & ors .. Respondents

Mr.Tejpal Ingale for Petitioner
Mr.C.M.Patil, Assistant Government Pleader
for Respondent nos. 1 and 2.
Mr.D.A.Nalavade for Respondent no.4 (absent)

WITH WRIT PETITION NO. 688 OF 1990

Shetkari Sahakari Sangh Limited Kolhapur.Petitioner

vs
Panhala Savada Mahal Shetkari Sahakari
Kharedi Vikri Sangh Limited & ors .. Respondents

Mr.D.A.Nalavade for Petitionker (absent)
Mr.P.M.Patil, Assistant Government Pleader for
Respondent no. 4
Mr.P.D.Dalvi for Respondent no. 2 (absent)

CORAM : S.B.MHASE AND

D.G.KARNIK, JJ

JUDGMENT RESERVED ON : 24th January, 2006

JUDGMENT DELIVERED ON: 28th March, 2006

ORAL JUDGMENT (Per D.G.Karnik, J)

1. These Writ Petitions involve common questions of law and facts and by orders dated 10th April, 1990 and 7th January, 1997 passed in Writ Petition No.688 of 1990 were ordered to be heard together. Hence, we have heard the Writ Petitions together and disposing them by this common judgment.

Re: **Writ Petition No. 5156 of 1989**

2. The petitioner herein is a District Central Cooperative Bank registered under the Maharashtra Cooperative Societies Act, 1960 (for short the M.C.S.Act). The respondent no. 1 is the State of Maharashtra and the respondent no.2 is the District Deputy Registrar of Cooperative Societies appointed under the M.C.S.Act. The respondent no. 3 is a Special Recovery Officer appointed under the M.C.S.Act and Maharashtra Cooperative Societies Rules (M.C.S.Rules) for the recovery of the loans. The respondent no. 5 is also a cooperative society interalia engaged in the business of sale of fertilisers and other agricultural inputs to the farmers in Karvir

taluka of Kolhapur district. The respondent no.4 is a federal cooperative society of which the respondent no.5 and other taluka level cooperative societies are members.

3. The petitioner society granted loans to the respondent no.5. As the respondent no.5 did not repay the loan the petitioner-bank filed a dispute against the respondent no. 5 for the recovery of the amount due under section 91 of the M.C.S.Act. The Cooperative Court passed an award directing the respondent no. 5 to pay to the petitioner part of the amount claimed as due together with interest and costs. Being aggrieved by the partial award, the petitioner-bank filed an appeal before the Maharashtra State Cooperative Appellate Court, which allowed the appeal in part and passed the award against the respondent no. 5. Thereafter, on petitioner's application the respondent no. 2-District Deputy Registrar issued a certificate of recovery under section 98 (a) of the M.C.S. Act which was put to execution through the respondent no. 3. The respondent no. 3 issued a notice of recovery to the respondent no. 5 under section 156 of the M.C.S. Act read with rule 107 (3) and 98 of the M.C.S.Rules. The respondent no. 3 thereafter attached and sold the property of the respondent no. 5. The amount

recovered from the auction sale has been deposited in the petitioner-bank by the respondent no. 3 in the account standing in his name. The money has not been appropriated and applied towards the dues of the petitioner under the award and is kept in a separate bank account of the respondent no.3. The respondent no. 1 State have sold the fertilisers to the respondent district sangh on credit. The respondent no. 4 sangh in turn had sold the fertilisers to the respondent no. 5 on credit. The respondent no. 5 did not pay the full price of the fertilisers sold to it by the respondent no.4. The respondent no. 4 therefore had filed a dispute under section 91 of the M.C.S.Act for recovery of its dues. An award was passed by the Cooperative Court and confirmed by the Cooperative Appellate Court. A Writ Petition challenging the award was filed in this Court and it appears that the same is pending. It appears that the respondent no. 1 Government of Maharashtra had no direct dealing with the respondent no. 5 but the fertiliser was sold by it on credit to the respondent no. 4 who in turn sold the same on credit to the respondent no.5. As the respondent no. 5 had not paid the dues of the respondent no. 4 it could not pay the dues of the government. The government therefore instead of recovering the dues from the respondent no. 4 claimed its dues

from the respondent no. 5 and wrote to the respondent no. 2 the District Deputy Registrar that its dues would have a priority. The respondent no. 2 in turn wrote to the petitioner and the respondent no. 3 that the government dues would have a priority. On account of this claim made by the government, the respondent no. 3 has not paid the money recovered by it by auction of the property to the petitioner; but has kept it in his own account. The petitioner has therefore challenged the communications by the government and by the District Deputy Registrar claiming priority for the government dues.

Re: **Writ Petition Nos. 688 of 1990 & 5005 of 1989**

The facts in these petitions are identical with the facts in Writ Petition No. 5156 of 1989 save difference in amounts due.

4. At the hearing of the petitions, we called upon the learned A.G.P. Pleader to produce before us any document to show that the government had made any supply of the fertilisers to the respondent no. 5 taluka sangh or to produce any other document to show that any money was due and payable by the respondent no. 5 taluka sangh to

the government. The learned A.G.P.was unable to produce any document before us. He however, submitted that the government had supplied the fertilisers initially to the district sanghs in various districts in the State including the respondent no. 4 for sale of fertilisers to the agriculturists through taluka sanghs. The respondent no. 4 had thus supplied the fertilisers to the respondent no. 5 for being sold to the farmers. The government was therefore entitled to recover the dues from the respondent no. 5. We are satisfied that there was no privity of contract between the government and the respondent no. 5, that the respondent no.5 had not purchased any fertilisers on credit from the government. On the other hand, it had purchased fertilisers from the respondent no. 4 on credit. As stated earlier, the respondent no. 5 had also filed separate proceedings for recovery of its dues from the respondent no.5. The government was not entitled to claim the very same amount from the respondent no. 5. We are therefore satisfied that the government had no prior claim and the respondent nos. 1 and 2 could not have issued any directions to the respondent no. 3 to recover its alleged dues on priority basis as government dues. They further could not have directed to the respondent no. 3 to withhold the payment of the

sale proceedings of the property of the respondent no. 5 without applying them for payment of the decretal dues of the petitioner. The petitioner had followed lawful procedure by filing a dispute under section 91 of the Cooperative Societies Act and had obtained an award of the Court against the respondent no.5. The Cooperative Appellate Court had confirmed and in fact enhanced the award. The respondent no. 2 had issued the recovery certificate in pursuance of the award and the property of the respondent no. 5 was sold in execution of the award. In the circumstances, the money received by the auction sale of the property of the respondent no. 5 ought to have been paid to the petitioner.

5. For these reasons, the petitions are allowed. Rule is made absolute in terms of prayer clause (b). The respondent no. 3 shall pay the money received by auction of the property of the respondent no. 5 to the petitioner in accordance with the awards passed in favour of the petitioner.

(D.G.KARNIK, J) **(S.B.MHASE,J)**

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